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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,688	12/03/2003	Randall Coleman Gellens	030218	8621
23696 7590 09/13/2007 QUALCOMM INCORPORATED 5775 MOREHOUSE DR. SAN DIEGO, CA 92121			EXAMINER TRAN, PHILIP B	
			ART UNIT 2155	PAPER NUMBER
			NOTIFICATION DATE 09/13/2007	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/727,688	<b>Applicant(s)</b> GELLENS ET AL.	
	<b>Examiner</b> Philip B. Tran	<b>Art Unit</b> 2155	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scheessele, U.S. Pat. No. 7,055,111 in view of Noe, U.S. Pat. Application Pub. No. US 2003/0023745 A1.

Regarding claim 1, Scheessele teaches a method for transferring data, comprising: formulating a set of criteria, including a first subset of the criteria and a second subset of the criteria, the first subset of the criteria corresponding to one or more triggering events, the second subset of the criteria corresponding to a group of conditions, the group consisting of a timing to request data and a timing for the data transfer, determining the criteria in the first subset has been met triggering by meeting the criteria in the first subset, to evaluate the criteria in the second subset, determining that the set of criteria has been met, and initiating a data transfer between the first entity and the second entity in response to determining that the set of criteria has been met (= determining a preferred download time for opportunistic downloading of the accumulated data from a digital apparatus to a download device) [see Scheessele, Abstract and Figs. 4-5 and Col. 6, Lines 14-32].

Scheessele does not explicitly teach conditions of a communication link required for data transfer between the first entity and the second entity. However, Noe, in the same field of downloading data from a network device endeavor, discloses monitoring utilization of the network connection and determining whether to receive data based on the utilization of the network connection [see Noe, Abstract and the Right Col. On Page 7, Lines 1-16]. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to incorporate the teaching of Noe into the teaching of Scheessele in order to efficiently download data according to the network connection condition.

Regarding claim 2, Scheessele does not explicitly teach the method for transferring data of claim 1, wherein the set of criteria includes a third subset of the criteria including one or more criteria corresponding to an amount of data to be transferred and a type of data to be transferred.

However, Scheessele does not explicitly teach a third subset of the criteria including one or more criteria corresponding to an amount of data to be transferred and a type of data to be transferred. However, Noe, in the same field of downloading data from a network device endeavor, discloses determining the amount of data received according to the network connection condition [see Noe, Abstract and the Right Col. On Page 7, Lines 1-21]. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to incorporate the teaching of Noe into the teaching of

Scheessle in order to efficiently adjust downloading of data according to the network connection condition.

Regarding claim 3, Scheessele further teaches the method for transferring data of claim 1, wherein the first entity is a user's device having a first application capable of coordinating the data transfers [see Abstract].

Regarding claim 4, Scheessele further teaches the method of transferring data of claim 3, wherein the second subset of criteria are chosen from the group consisting of an established communication link, the amount of data currently being sent over the communication link, a rate of data transfer presently available, the power being currently required to send data, the number of data packet re-transmissions per unit time occurring on the data currently being sent, a power level of a battery, a level of user activity and a time of day [see Col. 6, Lines 14-32].

Regarding claim 5, Scheessele further teaches the method of transferring data of claim 3, wherein the user's device is chosen from the group consisting of a personal laptop computer, a personal standup computer, a wireless communication device, a still camera, a video camera, an audio recording device and a PDA [see Abstract].

Regarding claims 6-8, Scheessele further teaches the method for transferring data of claim 3, further comprising installing the first application by a user's action where

the installation of the first application occurs without that user's knowledge and capturing the data by the first application without the user's knowledge and transferring the captured data to a second entity without the user's knowledge [see Abstract and Col. 5, Lines 21-67].

Regarding claim 9, Scheesele further teaches the method of transferring data of claim 7, wherein the type of data is chosen from the group consisting of keystroke information, files viewed, files created, websites visited and the usage of software applications [see Col. 4, Lines 11-30].

Regarding claims 10-12, Scheesele and Noe do not explicitly teach the keystroke information is related to determining a user typing signature, the first application is a delay cookie, and the keystroke information is personal information of the user. However, it would have been obvious to one skilled in the art to realize that keystroke information is a user 's personal information (or user typing signature) and application is a delay cookie as claimed because cookie is used to identify user and for other administrative purposes.

Claim 13 is rejected under the same rationale set forth above to claim 1.

Regarding claim 14, Scheessele further teaches the method for wireless communication of claim 13, wherein the first subset of the criteria includes a next user initiated communication link formed with the user's device [see Col. 2, Lines 17-58].

Regarding claim 15, Scheessele further teaches the method for wireless communication of claim 14, wherein the communication link formed is a traffic channel or a supplemental channel [see Fig. 3].

Regarding claim 16, Scheessele further teaches the method for wireless communication of claim 13, further comprising installing a first application on the user's device to coordinate the one or more requests for notification [see Fig. 4].

Regarding claims 17-18, Scheessele further teaches the method for wireless communication of claim 16, wherein the first application is a control environment and wherein the control environment is an execution environment or an operating system [see Fig. 3 and Col. 2, Lines 17-58].

Regarding claims 19-20, Scheessele further teaches the method for wireless communication of claim 16, further comprising installing a second application capable of generating one or more requests for notification and installing a third application capable of generating one or more requests for notification, wherein the second

application and the third application are each associated with an information service [see Fig. 4].

Regarding claims 21-23, Scheessele further teaches the method for wireless communication of claim 13, wherein the communication link is a traffic channel and the one or more requests for notification are sent upon completion of the traffic channel use by the device user and wherein the communication link is a traffic channel and the one or more requests for notification are sent prior to use of the traffic channel by the device user and wherein the communication link is a traffic channel and the one or more requests for notification are sent at one or more idle times during use of the traffic channel by the device user [see Col. 6, Lines 14-38].

Regarding claim 24, Scheessele further teaches the method of claim 13, wherein the one or more notification requests are associated with information of a type that is selected from the group consisting of email, a stock quote utility, an MMS utility, an instant messaging client, networked games, a weather checker, a person locator, a location monitor, news checker, entertainment and a medical reminder [see Col. 5, Lines 21-50].

Claim 25 is rejected under the same rationale set forth above to claim 1.



Regarding claim 26, Scheessele does not explicitly teach means for determining a time is to determine a condition of a communication link. However, Noe, in the same field of downloading data from a network device endeavor, discloses monitoring utilization of the network connection and determining whether to receive data based on the utilization of the network connection [see Noe, Abstract and the Right Col. On Page 7, Lines 1-16]. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to incorporate the teaching of Noe into the teaching of Scheessele in order to efficiently download data according to the network connection condition.

Claim 27 is rejected under the same rationale set forth above to claim 1.

Regarding claim 28, Scheessele further teaches the wireless communication device of claim 27, further comprising the first application to determine that a communication link is idle for sending the one or more requests for notification [see Col. 6, Lines 14-38].

Claim 29 is rejected under the same rationale set forth above to claim 1.

Regarding claims 30-32, Scheessele and Noe do not teach the method of claim 29, further comprising determining a priority based on the application of facial recognition software and determining a priority based on the application of sound

recognition software and the first entity is a cellular phone capable of taking a picture.

However, it would have been obvious to one skilled in the art to realize that implementation of facial recognition software as claimed is known in the art because it is used to identify user and for other administrative purposes.

Claim 33 is rejected under the same rationale set forth above to claim 1.

Regarding claim 34, Scheessele further teaches the wireless communication system of claim 33, wherein the network is the Internet [see Col. 4, Lines 11-30].

Claim 35 is rejected under the same rationale set forth above to claim 1.

***Other References Cited***

3. The following references cited by the examiner but not relied upon are considered pertinent to applicant's disclosure.

A) Tiedemann, Jr. et al, U.S. Pat. No. 7,054,293.

B) Uemura et al, U.S. Pat. No. 6,430,161.

C) Birdwell et al, U.S. Pat. No. 5,793,973.

D) Abu-Amara et al, U.S. Pat. No. 5,914,945.

E) Erving, U.S. Pat. Application Pub. No. US 2002/0172212 A1.

F) Svoboda et al, U.S. Pat. Application Pub. No. US 2002/0104011 A1.

G) Beesley, U.S. Pat. Application Pub. No. US 2003/0093520 A1.

4. A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS ACTION IS SET TO EXPIRE THREE MONTHS FROM THE MAILING DATE OF THIS COMMUNICATION. FAILURE TO RESPOND WITHIN THE PERIOD FOR RESPONSE WILL CAUSE THE APPLICATION TO BECOME ABANDONED (35 U.S.C. § 133). EXTENSIONS OF TIME MAY BE OBTAINED UNDER THE PROVISIONS OF 37 CAR 1.136(A).

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip Tran whose telephone number is (571) 272-3991. The Group fax phone number is (571) 273-8300. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar, can be reached on (571) 272-4006.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



PHILIP TRAN  
PRIMARY EXAMINER

Art Unit 2155  
Aug 30, 2007